

RULE X

HEALTH AND SAFETY

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10.01—SMOKING IN THE WORKPLACE

10.011

Summary Description
State law regulating workplace smoking

10.012

Application

Any enclosed area occupied by a person, firm, partnership, association, corporation, company, organization or legal entity of any kind that provides primarily, but not exclusively, clerical, professional, or business services, including, but not limited to, office spaces in private office buildings, state and municipal office buildings, and federal office buildings where other than federal employees are present; medical office waiting rooms; all factory or manufacturing plant areas; libraries; museums, hospitals, nursing homes, and other medical treatment facilities.

10.013

Exceptions

Public lobbies; private enclosed workplaces occupied exclusively by smokers, unless smoking is expressly prohibited by the fire marshal or by law, ordinance, or regulation, private homes serving as workplaces, office space leased or rented by a sole independent contractor for the contractor's own use; areas legally designated for smoking.

10.014

Provisions and Requirements

All public and private-sector employers must adopt a policy that accommodates, insofar as possible, the preferences of both smokers and non-smokers, particularly those employees who, as a result of a physical condition, are unduly sensitive to tobacco smoke. Specifically, within three months of the law's adoption (June 27, 1986), every employer must establish, implement, and maintain a written smoking policy. The policy must contain a provision to allow non-smoking employees to object to a smoke hazard or discomfort in the workplace and a clause requiring the employer to try to reach a "reasonable" accommodation between non-smokers and smokers by using already available means of ventilation or by separating or partitioning work spaces. No employer is required to make any expenditures or structural changes to accommodate the preferences of non-smoking or smoking employees. The written policy must be announced within three weeks of adoption and posted conspicuously in every workplace under the employer's jurisdiction.

10.015

Nondiscrimination Provision

Workers who exercise their right to file a complaint about their employer's violation of the law are protected from discrimination or termination without due cause.

10.016

Enforcement

The State Department of Health is responsible for enforcement. Employees may submit a written and signed letter to the department citing their employer's violation of the law. Upon receipt of a complaint, the department is authorized to issue a written notice requiring the employer to correct the violation within 10 days. If the department receives a second complaint for the same or a continued violation by the employer it may seek a court injunction to enforce compliance, correct the violation, and assess and recover a civil penalty.

10.017

Penalties

Any employer that fails to correct a violation or that repeats or continues a violation is liable for a civil penalty of not less than \$50 nor more than \$500. Each day that a violation is committed or permitted to continue constitutes a

separate offense.

10.02—Drug Testing

10.021

Summary Description

State law prohibiting mandatory drug testing of employees.

10.022

Application

Public and private-sector employers.

10.023

Prohibited Action:

Employers and their agents generally are prohibited from requesting or requiring any employee to submit a sample of urine, blood, or other bodily fluid or tissue for testing as a condition of continued employment.

Exceptions: Testing of a specific employee is permitted, provided certain conditions are met.

10.024

Conditions for Testing

Testing of a specific employee is permitted only if

(1) the employer has "reasonable grounds to believe based on specific objective facts" that the worker's job performance is impaired from use of controlled substances;

(2) the employee provides the test in private, "outside the presence of any person";

(3) testing is conducted in conjunction with a bona fide rehabilitation program;

(4) positive test results are confirmed by gas chromatography and mass spectrometry, or by some other technology that is at least as scientifically accurate;

(5) the employee is given an opportunity to have the sample tested or evaluated, at the company's expense, by an independent testing facility; and

(6) the employee is given a reasonable opportunity to rebut or explain the test results.

10.025

Enforcement

Employees may bring suit in civil court to enjoin violations of the law

10.026

Remedies/Penalties

An employer that violates the Act is guilty of a misdemeanor, punishable by a fine of not more than \$1000 or imprisonment for not more than one year, or both a fine and imprisonment. In addition to providing injunctive relief, the court may order the employer to pay punitive damages in addition to any award or actual damages and reasonable attorney fees and costs.